

## Maine Natural Resources Conservation Program

### Review Committee Meeting

**Date: June 4, 2009**

**Time: 9:00 am – 12:00 pm**

<b>Chair:</b>	Jim Cassida, DEP	<b>Minutes</b>	Kathy Jensen, TNC
<b>Participants:</b>	Present: Jim Cassida, DEP; Steve Timpano, IFW; Bob Shafto, MEACC; Norm Dube, DMR; Liz Hertz, SPO; Shawn Mahaney ACE; LeeAnn Neal, ACE; Will Brune, TNC; Bruce Kidman, TNC; Mark Lickus, DOT; Molly Docherty, MNAP; Kathy Jensen, TNC Review Committee Members Not Present, Jay Clement, ACE; Sally Stockwell, Maine Audubon		
<b>Agenda</b>	<u>Agenda:</u> 1) Roll Call of Members 2) Financial a) Fund balance update b) Fee calculation update c) Fee collection method 3) Web site a) Tour of sample site 4) Misc. a) Program name change b) Travel expenses c) Program perception 5) TNC staff update 6) RFP status update 7) Proposal rating criteria 8) Information exchange		
<b>Minutes</b>			
<b>1. Roll Call.</b>			
<p>Jay Clement is official Corps representative but could not make the meeting; he sent Shawn Mahaney and LeeAnn Neal to represent the Corps</p> <p>Mark Lickus is the current DOT representative but he will be transitioning off the committee.</p> <p>Jim asked that once review of proposals begins that organizations try to maintain continuity in their representatives on the committee.</p>			
<b>2. Financial</b>			
<p>Jim presented two spreadsheets: one with funds currently received by DEP and another with projects that have been approved but fees not yet received.</p> <p>When the program first began, DEP collected the fee up front with a policy of no refunds. This proved unworkable, particularly when the economy took a down-turn. The Corps was allowing deferment of fee payment until the project began so DEP has begun doing this too. DEP already had an agreement with DOT where they paid their fee when the project began.</p> <p>A question was asked about putting a requirement that the permit is not effective until the fee is paid. Legally DEP cannot issue permits with an effective date due to a water quality certification issue. The federal government gives</p>			

the State one year from the date an application is filed to issue a water quality certification pursuant to the federal mandate. A certification is automatically issued when a permit is issued since the permit is effective at the time the Commissioner signs it. By deferring the effective date of a permit in a special condition to allow for ILF payment at some time after the department decision date DEP risked being in violation of the water quality certification requirements if an applicant waited too long to start their project. To deal with this issue, DEP decided to include a condition on the permit that requires that the fee must be paid prior to construction. Since DEP doesn't have stop-work authority if construction begins prior to payment, they might consider restructuring the fee to include a penalty if construction is begun prior to payment of the fee.

DEP still has a policy of no refunds, but this has become less important since the fee is now not paid until the project begins. There was one exception to this policy: Washburn and Doughty's boat yard burned down right after they were issued a permit. They revised their plans to reduce the amount of impact so their fee was recalculated and a refund given.

TNC distributed a report showing the fees that have come in to DEP, which of those funds have been received by TNC, the amount going to overhead and the amount remaining for projects in each biophysical region.

Fees are due to be reset at the end of June. DEP will be doing an updated fee schedule and Fact Sheet by July 1, 2009. If an applicant files their application before July 1, they will be assessed the old fee.

A question was asked whether there was a "reverse formula" to use for acquisition. This question was deferred, but there will be a requirement in the full proposal to have an appraisal done which will provide the market value for any property or easement to be purchased.

### **3. Web site Tour**

Due to technical difficulties, the web site could not be brought up but a mock up sample done by TNC was passed around for the committee to look at. It should be possible to set up the site but not put links to it on DEP's main page, so the committee can look at it before it goes "live." Jim will look into that.

Plans are that the RFP, Memorandum of Understanding between the Corps, DEP and TNC, the contract between DEP and TNC will all be included on the site and there will be separate pages for the Review Committee and the Approval Committee with agendas and meeting minutes. TNC also has prepared a Frequently Asked Questions document, and a file that allows applicants to view the biophysical regions in Google Earth so they can zoom into their property and see what region they're in.

Jim floated the idea of putting all proposals on the web, which generated some discussion by the committee. It was decided that it would probably be most appropriate to post the proposals that received funding. Any communications about the project that resulted in changes to the proposal would also be included to provide a history.

It was suggested that this website could be used as a mechanism to solicit projects as well. MNAP has funding to assess sites and, while they did contact numerous groups like towns and land trusts, it could be useful to post information on the web and allow/remind these groups to suggest sites. Kristen Puryear is the contact for this project.

### **4. Miscellaneous**

#### **a) Program name change**

Concern was expressed that using the term "mitigation" in the name of this program might create confusion, particularly as it relates to climate change mitigation. As a result, the program name has been changed to the Maine Natural Resources Conservation Program and the Fund name will be the Maine Natural Resources Conservation Fund. The old name is still in the contract and will most likely be changed when the contract is renewed or amended in some way.

TNC seeks to maintain a separation between DEP's permitting/regulatory process and TNC's administration of the fund. DEP processes the permit, assesses the fees and at the point that the fee is sent to TNC, it becomes a grants program.

b) Travel expenses

The question was asked whether travel expenses could be reimbursed. This was felt to be an issue for the participating NGOs travelling to these meetings, not for state agencies. We don't want to create a barrier to full involvement of NGOs with this committee. TNC cutting reimbursement checks to Review Committee Members will require an amendment to the MOU between TNC and DEP. As a comparison, the Maine Outdoor Heritage program does cover travel expenses for NGOs. They do it on an individualized basis where a form is filed out and checks are issued after every meeting.

A question was asked about how other states with ILF programs deal with this question; this will need follow up. Another question was asked about whether there would be any travel expenses for the group as a whole for things like site visits, if there were any. This is uncertain at this point.

DEP also does not have a meeting room large enough to accommodate a Review Committee meeting with public attendance. This was not felt to be an issue, since other state agencies have large rooms that could be used.

All of these issues beg the question as to the necessity of having some amount of money set aside for administrative costs such as these. One suggestion was to add a small amount to the fee paid by permit applicants which would be set aside for these costs. This was not thought to be the best approach by the group, as it would be complicated to administer. One suggestion was that perhaps some amount of interest might be taken to cover these costs. This money would be outside of the fees assessed for compensation, so it might be more acceptable. It may also be possible to raise a separate amount to be put into a separate program account for administrative costs. Using the language "not to exceed" a certain amount could keep the administrative funds to a certain level, leaving the rest for projects. It was suggested that we check in with the Army Corps on these issues.

Jim noted that DEP sends the entire amount of In-Lieu Fee payment it receives to DEP. They usually charge an "indirect fee" of about 15% to cover administrative/overhead costs, so ILF is unusual. They cover their costs using other funds. Liz Hertz suggested that we not lose sight of this fact since it could be useful for match or other purposes.

## **5. TNC Staff Update**

TNC is hiring Alex Mas to direct this program starting July 13, 2009. Will Brune will be working with Alex to transition the program to him. Kathy Jensen will continue to provide program support. Alex will report to Bruce Kidman, TNC's Director of External Affairs.

## **6. RFP status update**

TNC had removed much of the program history/description from the RFP and put it into a Frequently Asked Questions (FAQ) to try to make it simpler and more user-friendly and get the applicant to the project form more quickly. The committee felt that that more of this information needed to be in the RFP itself. The MOU has a list of program goals that will be used in a program history in the RFP. These can go into the FAQ as well.

We want to make it clear that this program is meant to provide better compensation than the piecemeal approach that had been happening before. Also, emphasize that this is a grants program.

There was much discussion on the level of information that should be included in the RFP itself on the resources impacted and the type and amount of impact that generated the fees. Some wanted a lot of detail; others wanted to keep it more general. It was decided to keep the chart in the RFP as it is, at least for this round. The committee generally agreed that, while there does not have to be a one-to-one correspondence between impacts and compensation projects, over the long-term there should be a balance. There needs to be some flexibility to allow for really great projects to go forward even if there is not an exact match right at that moment. The largest issue is between coastal and freshwater wetlands – the differences here are more distinct.

TNC plans to provide the Review Committee with detailed reports on resources and impacts to use in the review process. When inquiries are made applicants can be educated and guided toward suitable projects. We want to try to cultivate/encourage the types of projects we want, but still bring in proposals to develop a portfolio of potential

compensation projects. In the review process the committee can also assess the pre-proposals to see if they might fit better under another funding program. Liz Hertz noted that the Habitat Restoration program has found that from project concept to project implementation stage can take several years.

Norm Dube asked what kind of flexibility there would be to approve lesser amounts than what the applicant might have asked for; partial awards or funding a portion or phase of a project. It is clear this flexibility exists but we would need to be careful not to cut it back to a point where the effectiveness of the project is compromised. The reverse could also be true – the applicant could underestimate the cost.

## **7. Proposal rating criteria**

The committee had a discussion of screening vs. scoring. It was generally felt that the pre-proposals should go through a screening process, not a scoring process. It would be more of a yes/no screening with space for notes, rather than a point scoring with specific raters. It would largely serve to weed out proposals that don't meet the program criteria. The entire committee does not need to specifically do this screening. TNC, DEP and the Corps can do this step, but the committee would like to see them. We might be able to find a way to post them on a website or ftp site that the group could access, perhaps password protected. There could be a conference call done to go through them all with the whole committee. The conference call could be optional; if the agency has input they can participate if they feel it's needed. Conference calls cost money, so that refers back to the discussion about administrative costs.

There could be cases where the pre-proposal document could be poorly done, but the project has the potential to be a good project. If this is the case, we could let the applicant know that they're not ready but to please return with a more complete proposal in a future round, or there could be some assistance provided, although it was not clear who would provide that assistance. Care must be taken to maintain objectivity/impartiality.

If there is a question asked by an applicant that seems of general interest, it can be added to the FAQ so the information can be shared with anyone else who might be applying.

The scoring sheet was reviewed and it was decided it would be more applicable to the full proposals. Add resource type and split out coastal wetlands vs. freshwater wetlands. Bump up the percentage on the "project readiness" criteria to 20% and reduce "Resources/Functions". Look at the agreement to see what it says about "threat"; does it pertain only to preservation? The criteria should be evaluated prior to being finalized to see if one type of project might lose out with the way it is currently set up. Since the scoring is subjective; based on a rater's opinions, all scores will be averaged to come to the final score. Can group them into ranges of High, Medium and Low.

Rating Criteria will be added into the RFP package; the more clearly all steps are delineated, the more transparent the process.

The committee decided the pre-proposal should be called a "Letter of Intent."

## **8. Information exchange**

The meeting ran a little long, so was adjourned after the proposal criteria discussion